

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)
KATERRA INC., *et al.*,¹) Chapter 11
Debtors.)
) Case No. 21-31861 (DRJ)
) (Jointly Administered)
)

**JOINT STIPULATION AND AGREED ORDER BETWEEN
THE DEBTORS AND GREENSILL LIMITED (IN LIQUIDATION)**

This stipulation and agreed order (this “Stipulation”) is made this 1st day of September, 2021 by each of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and Greensill Limited (In Liquidation) (“Greensill,” and together with the Debtors, the “Parties”).

Recitals

WHEREAS, on June 6, 2021 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1330 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”);

WHEREAS, the Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on August 7, 2021, Greensill filed 33 proofs of claim² against the Debtors (the “Proofs of Claim”), each in an amount of not less than \$440 million;

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/katerra>. The location of Debtor Katerra Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 9305 East Via de Ventura, Scottsdale, Arizona 85258.

² The Proofs of Claim are numbers 753, 757–59, 762, 763, 766–69, 774–76, 778, 787–90, 792–805, and 807.

WHEREAS, on August 26, 2021, the Court entered the *Order (I) Conditionally Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of the Ballot and Notices in Connection Therewith, and (IV) Approving the Scheduling of Certain Dates in Connection with Confirmation of the Plan* [Docket No. 938] and approved certain solicitation and voting procedures attached thereto as Exhibit 2 (the “Solicitation Procedures”) with respect to the *Amended Joint Chapter 11 Plan of Katerra Inc. and Its Debtor Subsidiaries* [Docket No. 943] (the “Plan”);

WHEREAS, pursuant to Sections III.3.d.(2) and III.3.d.(3) of the Solicitation Procedures, the Debtors and Greensill have determined that it is in their best interests to enter into this Stipulation to temporarily allow each of the Proofs of Claim as a General Unsecured Claim (Class 3) in the amount of \$1.00 for voting purposes only pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and

WHEREAS, the Debtors have discussed the relief requested in this Stipulation with the Official Committee of Unsecured Creditors (the “Committee”), and the Committee is supportive of the Debtors’ entry into this Stipulation.

NOW, IT IS THEREFORE STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION, IT IS SO ORDERED AS FOLLOWS:

1. The foregoing recitals are incorporated herein by reference.
2. Each of the Proofs of Claim is temporarily allowed as a General Unsecured Claim (Class 3) in the amount of \$1.00 solely to allow Greensill to vote on the Plan pursuant to Bankruptcy Rule 3018(a).
3. Except as otherwise set forth explicitly in this Stipulation, nothing in this Stipulation or the relief sought herein shall constitute or be deemed: (a) an allowance of administrative expense claims under section 503(b) of the Bankruptcy Code; (b) an assumption or

rejection of an executory contract or unexpired lease under section 365 of the Bankruptcy Code; (c) an admission as to the amount of, basis for, or validity of any claim (including, for the avoidance of doubt, the Proofs of Claim) against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (d) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, including the Proofs of Claim; (e) a promise or requirement to pay any claim (including, for the avoidance of doubt, the Proofs of Claim); (f) an implication or admission that any particular claim is of a type specified or defined in the Stipulation or the Proofs of Claim or a finding that any particular claim is an administrative expense claim, other priority claim, or secured claim; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' bankruptcy estates; (h) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, including without limitation to object to the Proofs of Claim; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; or (j) relief from the automatic stay of section 362(a) of the Bankruptcy Code to enforce or seek collection of any claim directly against the Debtors or the Debtors' bankruptcy estates.

4. This Stipulation may be signed in counterparts and signatures may be delivered by fax or email, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each person who executes this Stipulation on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

5. This Stipulation constitutes the entire agreement between the Parties in respect of the subject matter hereof and shall not be modified, altered, amended, or vacated without the prior written consent of all Parties hereto. No statement made or action taken in the negotiation of this Stipulation may be used by any party for any purpose whatsoever.

6. Each Party represents and warrants to the other Party that it has: (a) entered into this Stipulation freely and voluntarily and with full knowledge of its significance; and (b) been represented by counsel of its own choice in the negotiations preceding the execution of and in connection with the preparation and execution of this Stipulation.

7. Notwithstanding the possible applicability of Bankruptcy Rule 6004, 7062, and 9014, or otherwise, the terms and conditions of this Stipulation are immediately effective and enforceable upon its entry.

8. The Court shall retain exclusive jurisdiction to hear any matters or disputes arising from or relating to this Stipulation. Any request for relief brought before the Court to resolve a dispute arising from or related to this Stipulation, and the matters agreed to herein, shall be brought on proper notice and in accordance with the relevant Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of Texas.

IT IS SO ORDERED.

Signed: _____, 2021
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED TO THIS 1ST DAY OF SEPTEMBER, 2021:

September 1, 2021

/s/ Matthew D. Cavanaugh

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